

The Restriction Requirement is traversed on the basis that the inventions are so closely related within the context of the disclosure of the application that they cannot properly be considered independent and distinct within the statutory meaning of 35 U.S.C. § 121. Claims directed to a process for expanding a population of endothelial cells obtained from peripheral blood (claims 1-14; Group I) are clearly related to claims directed to a population of expanded endothelial cells prepared by the method (claim 44) and transgenic endothelial cells obtained using cells prepared by the method (claims 37-43); to claims directed to a transgenic endothelial cell which is prepared by a process comprising stably transforming a population of circulating human endothelial cells outgrown from blood with a vector comprising an isolated DNA sequence encoding a preselected protein operably linked to a promoter functional in human endothelial cells, a pharmaceutical composition comprising those transgenic endothelial cells, and a method of treating hemophilia which employs those transgenic endothelial cells to express Factor VIII protein (claims 17-23 of Group II, and claims 24-25 as they depend on claim 17); and to claims directed to a diagnostic method which employs an expanded population of endothelial cells to determine if a mammal is at risk of an acquired or genetic indication or disease, wherein the expanded cells are obtained by culturing, in contact with a collagen I-coated surface, buffy coat cells obtained from peripheral mammalian blood in the presence of a cell culture medium containing an effective amount of VEGF, which medium is free of bovine brain extract (claims 33-36; Group IV).

The Restriction Requirement is also traversed on the basis that Restriction Requirements are optional in all cases. M.P.E.P. § 803. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it arguably may include claims to distinct or independent inventions. M.P.E.P. § 803. Moreover, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple divisional applications in order to obtain protection for the claimed subject matter. Due to the relatedness of the subject matter of the claims in Group I and claims 17-23 (and claims 24-25 as they depend on claim 17) in Group II, the claims in Groups I and IV, and the claims in Group I and claims 37-44, as discussed above, those claims can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner. In

Serial Number: 09/865,022

Filing Date: May 24, 2001

Title: TRANSGENIC CIRCULATING ENDOTHELIAL CELLS



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Dkt: 600.449US1

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particular, as new claims 37-44 are dependent on or recite the process of claim 1, i.e., claim 1 and claims 37-44 are linked (M.P.E.P. 809.03), and claims 33-36 recite a use of the product prepared by the method of claim 1, claims 1-14 and 39-44, and/or claims 1-14 and 33-36, can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner.

Further, in the event the Examiner deems the restriction in the Restriction Requirement dated March 11, 2002 proper, the Examiner is respectfully requested to rejoin the non-elected claims, e.g., any of claims 17-23 (and claims dependent on claim 17) and 33-44, upon a notice of allowable subject matter for the elected claims in the above-identified application.

Thus, the Restriction Requirement is properly traversed. Accordingly, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

The Examiner is invited to contact the below-signed attorney if there are any questions regarding this Response or if prosecution of this application may be assisted thereby.

Respectfully submitted,

ROBERT P. HEBBEL ET AL.,

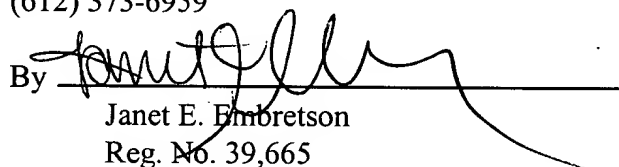
By their Representatives,

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Date

April 11, 2002

By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 11th day of April, 2002.

Name

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